

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

UNIVERSITY HOSPITAL, INC.

Employer

and

Cases 9-RC-17655
9-UC-473

OHIO COUNCIL 8, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO

and

LOCAL 217, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioners

REGIONAL DIRECTOR'S DECISION AND ORDER
AND
DECISION AND DIRECTION OF ELECTION

The Employer, a non-profit Ohio corporation, operates an acute care hospital providing a wide range of health-related services in a campus like setting in Cincinnati, Ohio, where it employs approximately 398 employees in the voting group found appropriate. Petitioners filed petitions with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to clarify the existing bargaining unit that they represent to include various unrepresented classifications of employees or, in the alternative, seeking a self-determination election among a residual unit of such employees. A hearing officer of the Board held a hearing on the issues raised by the petitions and the parties filed briefs with me.

At the hearing and in their briefs, the parties disagree on two main issues: (1) whether a unit clarification petition is appropriate; and (2) assuming it is not, the appropriate composition of a residual non-professional voting group to participate in a self-determination election.

The Petitioners contend, in essence, that a unit clarification petition is appropriate because the classifications they seek to clarify into the existing unit are "newly-created positions" or positions which have recently undergone substantial change. The classifications that Petitioners seek to clarify into the existing unit are: Patient Care Assistants, Medical Assistants, Visitors Services Associates, Equipment Operators, Medical Data Entry Operators, Schedulers, Medical Records Specialist II, Patient

Relations Specialist, Student Nurses, Staff Assistant, and O.R. Requisitioner. The Employer, on the other hand, contends that unit clarification is not appropriate because (1) the positions for which clarification is sought are not newly created but were in existence at the time the parties entered into their current collective-bargaining agreement, which does not include the classifications as part of the recognized unit; and (2) there have not been any recent substantial changes in the duties of any of the classifications sought by the Petitioners such as would make clarification appropriate.

If the unit clarification petition is not appropriate, the Petitioners seek a self-determination election among the same employees or classifications that may seek to accrete into the existing unit through the clarification proceeding. The Employer argues that a self-determination election among such a residual voting group would be inappropriate and that any residual non-professional voting group must include, in addition to the employees sought by the Petitioners, the following classifications: Administrative Assistant, Coder/Abstractor, Coder/Abstractors II and III, Administrative Coordinator, Office Coordinator, Senior Staffing Coordinator, Volunteer Services Coordinator, O.R. Requisitioner, Trauma Registrar, Tumor Registrar, Administrative Secretary, Administrative Secretary II, Medical Secretary, EEG/EMU Certified Specialist, Administrative Dietetic Technician, EEG/EMU Technician, Medical Records Technician, Registered EEG Technologist, Registered EEG/EPT Technologist, Pharmacy Technician I, Pharmacy Technician II, Pharmacy Technician III, Medical Records Specialist II. The Petitioners would exclude these additional classifications from the residual non-professional voting group on the grounds that they are confidential employees, business clerical employees, technical employees or supervisors within the meaning of the Act.

I have considered the evidence and the arguments presented by the parties on all the issues and concluded, for the reasons discussed in detail below, that it would not be appropriate to clarify the classifications sought by Petitioners into the existing unit. Accordingly, I will dismiss the clarification petition. Regarding the representation petition, I have concluded, as discussed *infra*, that the appropriate residual non-professional voting group for a self-determination election must include the employees in the following classifications: Rad Clinical Care Associate, Clerical Assistant, Clinical Assistant, Medical Assistants, Transplant Assistant, Visitor Services Associate, File Clerk, Central Dispatch Coordinator, Clinical Services Coordinator, Staffing Coordinator, Patient Monitor, Communication Specialist, Emergency Transport Communication Specialist, Cardiac Technician, Dialysis Technician, Orthopedic Technician, Medical Transcriptionist, Intake Worker, Patient Care Assistants, Client Service Attendant, Senior CSA, Pharmacy Technician I, Pharmacy Technician II, Pharmacy Technician III, Staff Assistant, Student Nurse, Equipment Operator, Medical Data Entry Operator, Scheduler (Preoperative and Diagnostic Services), Medical Records Specialist II, Patient Relations Specialist, Administrative Assistants, Coder/Abstractor, Administrative Coordinator, Office Coordinator, Senior Staffing Coordinator, O.R. Requisitioner, Trauma and Tumor Registrars, Administrative Secretary, Administrative Secretary II, Medical Secretary, Administrative Dietetic Technician, EEG/EMU Technician, and Ophthalmic Assistant. Accordingly, I will direct a self-determination election in a voting

group that consists of approximately 398 employees in the above classifications to determine whether the unit be included in the existing unit for purposes of collective bargaining. In directing this election, I note that Petitioners have agreed to proceed to an election in a larger residual voting group of non-professionals if I find such a voting group to be appropriate. The election, however, in the residual non-professional voting group that I have found appropriate is contingent on Petitioners providing a sufficient showing of interest within that voting group.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and reasoning that support each of my conclusions on the issues.

I. AN OVERVIEW OF OPERATIONS

The Employer's acute care hospital is part of a health care alliance consisting of various hospitals, laboratory facilities and numerous physicians' offices within and surrounding Cincinnati. The alliance is known as the Health Alliance of Greater Cincinnati (Alliance). ^{1/} The subject petitions, however, only involve the Employer's acute care facility.

The Employer's operations consist of numerous patient care facilities where both represented and unrepresented employees work. Three labor organizations currently represent many of the Employer's employees. Petitioners represent a non-conforming unit of approximately 600 employees in a variety of non-professional positions. ^{2/} The other labor organizations include the Ohio Nurses Association, which represents approximately 900 registered nurses, and the International Union of Operating Engineers, Local 20, which represents approximately 38 employees in skilled maintenance positions.

James Hurst, M.D., senior vice-president, is responsible for the overall management of the Employer's operations. Karen Bankston, the Employer's vice-president of operations, reports directly to Hurst. The following individuals report directly to Bankston: Michael Grodi, vice-president of hospital services; Pam VanSant, vice-president of administration; and Carolyn Thomas, vice-president of patient care services. Douglas Jerrold, director of finance, reports to both Hurst and Bankston.

^{1/} The Employer has been a member of the Alliance from its inception in 1994 and became a private entity on January 1, 1997.

^{2/} The Petitioners represent the Employer's employees in a variety of classifications as set forth in detail in Article 2 of the parties' most recently expired current collective-bargaining agreement. Since the existing unit is described by job classification instead of work performed, the normal principles of accretion apply. *John P. Scripps Newspaper Corp. d/b/a The Sun*, 329 NLRB 854 (1999).

Three divisional directors report to Thomas: Jayne Parker, in charge of preoperative activity; David Weybright, in charge of ambulatory and women's services; and Pat Williams, in charge of all of the in-patient units. The various department heads are under the three divisional directors.

The Employer's fringe benefits are the same for all employees and, in fact, are the same for all employees in the Alliance. For example, all employees share the same medical benefits, paid time off, and long-term disability benefits. The lowest minimum and maximum pay rate of those employees whom the Employer argues should be part of the residual non-professional group belong to employees holding the classification of file clerk, with a range from \$7.32 to \$10.39 an hour. The highest minimum and maximum pay rate among those same employees is the hourly rate for the EEG/EPT technologist, with a range of from \$14.88 to \$22.65 an hour.

II. UNIT CLARIFICATION PETITION

A. An Overview

Petitioners seek, by their unit clarification petition, to add the following employees/classifications to the existing non-conforming unit that it represents:

- (1) Patient Care Assistants
- (2) Client Service Attendant
- (3) Senior Chart Services Attendant
- (4) Medical Assistants
- (5) Visitor Services Associate
- (6) Student Nurse
- (7) Equipment Operator
- (8) Medical Data Entry Operator
- (9) Scheduler (Preoperative and Diagnostic Services)
- (10) Medical Records Specialist II
- (11) Patient Relations Specialists
- (12) Staff Assistant
- (13) O.R. Requisitioner

In order for clarification to be appropriate, it must be shown either that: (1) there have been recent substantial changes in the employer's operations (*Batesville Casket Company, Inc.*, 283 NLRB 795 (1987)); or (2) the jobs in issue are new or substantially changed since the parties entered into their collective-bargaining agreement.^{3/} (*SunarHauserman*, 273 NLRB 1176 (1984); *The Washington Post Company*, 256 NLRB 1243 (1981)).

There is no evidence here of any recent substantial changes in the Employer's operations and the evidence is insufficient to establish that the jobs in question, with the exception of that of student nurse and staff assistant, are new or have substantially changed since the parties entered into their most recently expired contract.

B. Patient Care Assistants, Client Service Attendants and Senior Client Service Attendant

There is no basis in the record before me for accreting the approximately 125 patient care assistants (PCAs), the two client service attendants, and the one senior client service attendant into the existing unit represented by Petitioners. In this regard, the record evidence discloses that these positions clearly were in existence before the date that the Employer and Petitioners entered into their most recently expired collective-bargaining agreement. Moreover, during negotiations for the most recently expired agreement, Petitioners sought to include the PCAs in its existing bargaining unit and the Employer refused.

C. Medical Assistants

The record before me does not warrant clarifying the existing unit to add the 44 employees in the medical assistant classification. Like the patient care assistants' positions, this classification was in existence before the date that the Employer and Petitioners entered into their most recently expired collective-bargaining agreement. Although the evidence shows that Petitioners at one time represented the medical assistants, the medical assistant classification is not listed as being part of the recognized bargaining unit in the two most recently expired contracts between the parties. Moreover, there is no evidence that Petitioners continued to represent

^{3/} The record closed in this case on May 21, 2002. The issuance of the decision was blocked by an unfair labor practice charge filed against the Employer resulting in a determination to issue a complaint and an informal settlement agreement. While the unfair labor practice charge was pending, I was administratively advised that the parties reached agreement on a new contract on September 18, 2002 which was effective September 19, 2002. The accretion issues raised by the instant clarification petition have been considered based on the record testimony and the applicable contract at the time was the most recent expired agreement which was effective by its terms from September 19, 1999 to September 18, 2002.

employees in the classification of medical assistant during the term of the two most recently expired contracts. Finally, there is insufficient evidence in the record that the current medical assistants performed the same type of work as their predecessors in that classification.

D. Visitor Services Associates

The record before me does not provide any basis for accreting the seven visitor services associates into the existing unit. The record fails to disclose how long this classification has been in existence. Thus, there is no basis for me to conclude that these are newly created classifications or classifications that have substantially changed since the parties entered into their most recently expired collective-bargaining agreement.

E. Equipment Operators

With regard to the three equipment operators, the record discloses that the same individuals in this classification at one time worked in the bargaining unit and were classified as a Mover I or II and that they performed similar, if not identical, duties as the current equipment operators. Although the individuals in these classifications were in the unit prior to the time the Employer went from a public to a private entity about January 1, 1997, there is no evidence that Petitioners have represented them since that time. It appears from the record that the equipment operators are not a newly created classification or a classification that has substantially changed since the parties entered into their most recently expired collective-bargaining agreement.

F. Medical Data Entry Operators

The record evidence fails to establish when the medical data entry operators' classification was established. The Employer abolished a similarly titled classification in 1995 or 1996. However, it is not clear from the record whether the abolished classification performed the same duties as the employees who occupy the current medical data entry operator position. Moreover, the classification of medical data entry operator is not listed as a classification within the bargaining unit covered under the most recently expired agreement. Finally, there is no affirmative evidence that the medical data entry operator classification is a newly created classification or a classification that has substantially changed since the parties executed their most recently expired collective-bargaining agreement.

G. Schedulers

The record evidence regarding the classification held by the three schedulers (preoperative & diagnostic services) does not support accreting these individuals into the existing unit. Thus, the evidence shows that schedulers work only in the Employer's operating rooms department and that they are involved in scheduling various surgery and related procedures. In contrast, the schedulers listed in the current agreement are

clinical schedulers who work in admitting and registration. Finally, witness testimony suggests that this classification and title were established before the parties executed the most recently expired agreement.

H. Medical Records Specialist II

One individual holds the classification of medical records specialist II. However, there is no current job description for the classification and the evidence does not establish how long this classification has been in existence. The record reflects that the individual in this classification coordinates the release of medical records information when it is requested by outside entities, including managed care companies, attorneys for workers compensation claims, and insurance adjusters. Such requests are forwarded to an outside contractor retained by the Employer. The outside contractor responds to the requests for information. Although the classification of medical records specialists I is in the unit, the record evidence is insufficient to determine the similarity of the functions of the medical records specialist I with those of the medical records specialist II.

I. Patient Relations Specialists

The record evidence before me regarding the classification titled patient relations specialist is sparse. The record does not disclose the number of individuals employed in this classification, but it does disclose that they work in an office area separate from bargaining unit employees who hold a similar title of patient information clerks. The record further discloses that patient relations specialists investigate patient complaints. There is no evidence that this function or a similar function is performed by any unit employees.

J. Conclusions

Based on the foregoing, the entire record, and having carefully considered the arguments of the parties at the hearing and in their briefs, I conclude that Petitioners have not met their burden of establishing that the above classifications, viz, patient care assistants, client service attendants, senior client service attendant, medical assistant, visitor services associates, equipment operators, medical data entry operators, schedulers, medical records specialist II, and patient relations specialist, are newly created or have substantially changed since the date the parties entered into the most recently expired collective-bargaining agreement. Thus, the employees in those classifications cannot properly be accreted into the existing unit represented by Petitioners. See, *Batesville Casket Company, Inc.*, supra; *SunarHauserman*, supra. The employees in these classifications must be given an opportunity to vote on the question of representation in the event that they are found to be a part of the residual non-professional voting group. Accordingly, I will dismiss the unit clarification petition as it relates to the employees in the above classifications.

K. Student Nurses, Staff Assistant and O.R. Requisitioner

An Overview

There remains for consideration whether it is appropriate to clarify the unit to include the three student nurses, one staff assistant and the O. R. Requisitioner. Although the Employer has long used student nurses in various other capacities throughout the hospital, the record establishes that the Employer created the classification of student nurse late in the 2001 calendar year or early in 2002. The Employer established the staff assistant classification approximately 6 months prior to the hearing in these matters. Accordingly, as the Employer created these two positions during the term of the most recently expired collective-bargaining agreement, the dispute over their unit placement may arguably be resolved by means of a unit clarification proceeding. See, *Union Electric Co.*, 217 NLRB 666, 667 (1975); *Crown Cork & Seal Co.*, 203 NLRB 171 (1973).

The Petitioners contend for the first time in their brief that the O.R. Requisitioner, a classification held by Damien Kramer, should be clarified into its existing unit.^{4/} The Employer contends that this classification is a non-professional classification and that it is appropriately included in the residual non-professional group.

1. O.R. Requisitioner

I decline to clarify the classification of O.R. Requisitioner into its existing unit. This issue was not litigated during the hearing and the Employer had no opportunity to adduce evidence bearing on the clarification of the unit to include this classification.

2. Applicable Legal Principles

With respect to the student nurses, a more detailed analysis is required. Although this classification was recently established, it does not follow that they should automatically be accepted to the existing unit. Unit clarifications result in the addition of employees to bargaining units without affording them the opportunity to vote in a secret ballot election or to express their preference regarding union representation by some other accepted method. The Board, therefore, applies a “restrictive” policy in determining whether to clarify units to accrete employees to existing units. *Melbet Jewelry Co., Inc.*, 180 NLRB 107 (1969); see also *United Parcel Service*, 303 NLRB 326 (1991). Indeed, the Board will only find an accretion when the employees sought to be added to a unit have little or no separate group identity and cannot constitute a separate appropriate unit and/or have an overwhelming community of interest with the existing unit. Compare: *Towne Ford Sales and Town Imports*, 270 NLRB 311 (1984), enf. 759

^{4/} The Petitioners’ UC petition does not state that they seek to add the O.R. Requisitioner to the existing unit and they did not seek clarification of this classification during the hearing.

F.2d 477 (9th Cir. 1985), with *Compact Video Services*, 284 NLRB 117 (1987); and *Safeway Stores, Inc.*, 256 NLRB 918 (1981). The criteria considered by the Board in determining whether employees constitute an accretion to an existing unit include: (1) the integration of operations; (2) commonality of day-to-day supervision; (3) similarity of working conditions; (4) common control over labor relations; (5) collective-bargaining history; and (6) geographical proximity. *Compact Video Services*, supra; see also *United States Steel Corporation*, 280 NLRB 837 (1986); *Safety Carriers, Inc.*, 306 NLRB 960 (1992). I turn now to an examination of the relevant facts before proceeding to a disposition of the student nurses and staff assistant positions vis-à-vis the unit clarification petition.

3. Student Nurses - Summary

The record discloses that student nurses are among the lowest paid employees in the residual non-professional group. They are paid a minimum rate of \$8.90 an hour and a maximum of \$12.62. Employees who hold the classification of student nurse are required to be students in a nursing program. They perform non-clinical tasks, including maintaining supplies, and equipment that support direct patient caregivers. These responsibilities involve gathering supplies, preparing patient rooms for new admissions, removing equipment and supplies from patient rooms on discharge, cleaning equipment, and running errands.

Although student nurses report directly to a charge nurse, the record is unclear regarding the department(s) in which they work. For example, one witness testified that she believes that the student nurses work in the neurology department, while another witness testified that she believes they are employed in one or more of the in-patient departments. Neither witness testified on this point with any degree of certainty. Nonetheless, it is clear that the student nurses are employed in various locations on the Employer's campus.

4. Staff Assistant - Summary

The record reflects that the wage rate of the staff assistants is near the median range of wages of the employees in the residual non-professional group; their pay ranges from \$10.42 to \$15.33 an hour. The employee who holds the classification of staff assistant is a clerical employee who performs service recovery work in the patient relations department. Although there is no job description for this classification, the record reflects that the employee in this classification is primarily charged with telephoning patients after they are discharged from the hospital to inquire about their experience at the hospital. The staff assistant records the patient's responses into a computer database and issues a weekly report regarding the collected data.

Director of Medical Records, Kathleen Beal, is in overall charge of the patient relations department. Peggy Jones, Director of Patient Relations, reports to Beal and has immediate responsibility for patient relations where she supervises approximately

11 employees. In addition to the staff assistant, Jones supervises patient information clerks, the client services attendants, and patient relations specialists. As discussed earlier, Petitioners seek the latter two classifications in their unit clarification and representation petitions and the patient information clerks are currently part of the Petitioners' unit.

The patient information clerks work at the information desk in the Employer's main lobby. The record does not disclose the degree of contact that the staff assistant has with other employees in the patient relations department or, for that matter, the degree to which she has contact with any other employees. Moreover, it is not clear from the record where she works in relation to these other employees.

5. Conclusions

I have examined all of the criteria considered by the Board in determining whether to accrete employees into an existing unit. Based upon the nature of their work responsibilities, I find that there is insufficient evidence in the record with regard to the student nurses and the staff assistant to conclude that they share an overwhelming community of interest with bargaining unit employees compelling their inclusion in the existing unit without affording them an opportunity to vote. Thus, I note that the record does not reflect the department(s) in which the student nurses work, the extent of their daily contact with any employees who are in the existing unit, or whether they share common immediate supervision with unit employees. Although the staff assistant shares immediate supervision with employees in the existing unit, the record does not indicate the extent of daily contact between the staff assistant and unit employees. Finally, there is no evidence that the staff assistants' tasks are integrated with those of any unit employees. Therefore, I find that the Petitioners have failed to carry their burden of establishing that the student nurses and staff assistants should be accreted into the existing unit. Accordingly, I will dismiss the clarification petition as it relates to those two classifications.

III. REPRESENTATION PETITION

A. Agreed Composition for the Residual Non-Professional Voting Group

Having found that the unit clarification petition is inappropriate, I must now determine the appropriate voting group for a self-determination election. On this issue, Petitioners initially argued that the appropriate voting group for a self-determination election should be limited to those employees or classifications that it sought to clarify into the bargaining unit which it currently represents. On the other hand, the Employer argues that such a voting group would be inappropriate and that any voting group must include all of its unrepresented non-professional employees.

With regard to the composition of the residual non-professional voting group, the Petitioners and the Employer stipulated or agreed that employees in the following classifications are non-professional employees employed by the Employer who may be

added to the existing unit by means of a self-determination election ^{5/}: Rad Clinical Care Associate, Clerical Assistant, Clinical Assistant, Medical Assistants, ^{6/} Transplant Assistant, Visitor Services Associate, File Clerk, Central Dispatch Coordinator, Clinical Services Coordinator, Staffing Coordinator, Patient Monitor, Communication Specialist, Emergency Transport Communication Specialist, Cardiac Technician, Dialysis Technician, Orthopedic Technician, Medical Transcriptionist, Intake Worker, Patient Care Assistants, Client Service Attendant, Senior CSA, Pharmacy Technician I, Pharmacy Technician II, and Pharmacy Technician III.

Although I found that the employees in the classifications covered by the Petitioners' clarification petition could not be accreted into the existing unit, the record evidence establishes that these employees share a sufficient community of interest with the unit employees to be included in the same unit if they vote for representation. Thus, I find that the following classifications of employees should be allowed to vote on whether they wish to be added to the existing unit by means of a self-determination election: Staff Assistant, Student Nurse, Equipment Operator, Medical Data Entry Operator, Scheduler (Preoperative and Diagnostic Services), Medical Records Specialist II, and Patient Relations Specialist. ^{7/} The record reflects that the Employer employs about 398 currently unrepresented non-professional employees in the voting group found appropriate.

The placement of approximately 18 disputed classifications remains for resolution. A discussion of each disputed classification, the positions of the parties, the relevant precedent, and my conclusion as to the unit placement of each classification follows.

^{5/} The listing includes employees in positions sought by Petitioners in their unit clarification petition. Accordingly, there is some duplication between the two lists.

^{6/} At the hearing, the Petitioners agreed that Medical Assistants should be included in the voting group because they were non-professional employees who had a community of interest with the existing unit. However, the Petitioners now contend, in their brief, that the Medical Assistants are technical employees. I find, based on the record as a whole, that the evidence fails to support the Petitioners' claim that the Medical Assistants are technical employees and I will not exclude them from the voting group on that basis.

^{7/} In this connection, I note that there is sufficient record evidence that none of these classifications belong to any of the other appropriate units approved by the Board in the health care industry.

B. The Board's Health Care Rule and Relevant Precedent

The Board's Health Care Rule [Rule] set forth at 284 NLRB 1515 (1987), provides that, except in extraordinary circumstances or where there are existing non-conforming units, the following units are appropriate:

- (1) All registered nurses
- (2) All physicians
- (3) All professionals, except registered nurses and physicians
- (4) All technical employees
- (5) All skilled maintenance employees
- (6) All business office clerical employees
- (7) All guards
- (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards

The Rule was approved by the Supreme Court in *American Hospital Association v. NLRB*, 499 U.S. 606 (1991). Where there are existing non-conforming units, the Rule provides that the Board will find appropriate "only units which comport, insofar as practicable, with these units." *St. John's Hospital*, 307 NLRB 767 (1992). In *St. John's*, the petitioner represented one of several non-conforming maintenance units and sought to represent a portion of the residual skilled maintenance employees in yet another separate unit. *Id.* The Board held that, "in the face of existing non-conforming units, the conformance, 'insofar as practicable,' to the units set forth in the Rule means adding employees to an existing unit rather than creating [another] unit." *Id.* at 768. Thus, the Board requires "all unrepresented employees residual to the existing unit or units be included in an election to represent them." *Id.* at 768. Further, "an incumbent wishing to represent employees residual to those in its existing unit must do so by adding them to the existing unit, usually by means of a self-determination election." *Id.* at 768. I will, therefore, examine the Petitioners' requested unit against the background of the above extant Board precedent.

C. ADMINISTRATIVE ASSISTANTS

1. An Overview

The Petitioners contend that 11 administrative assistants should not be included in the voting unit, apparently because they are confidential employees or, in the case of the administrative assistant in radiology, a technical employee or business office

clerical. The Employer maintains that, with the exception of the administrative assistant to Director of Human Resources Steve Burns, all the administrative assistants (10) are non-professional employees who are properly included in the residual group.

Administrative Assistants are clerical employees involved in performing medical billing duties, data analysis, or scheduling of services, depending on the particular department. Vice-president of Operations Bankston has an administrative assistant, as do each of the three vice-presidents below her and the three divisional directors who are in patient care services. At least one other administrative assistant is employed in the radiology department under the supervision of the director of that department and yet another is employed under the supervision of the clinical director of the neuroscience institute. Although the record does not disclose the location or reporting hierarchy for the remaining administrative assistants, it does reflect that there are administrative assistants in several other departments, including admitting and registration, Air Care, social work, nuclear medicine, medical services, facilities management, and emergency medicine. Their primary functions involve scheduling and billing.

The three vice-presidents below Bankston and the three divisional directors in patient care services, to whom six of the administrative assistants report, are not involved in the formulation of collective-bargaining agreement proposals or other labor relations policies on behalf of the Employer. None of the administrative assistants attend managerial meetings involving labor relations. Some administrative assistants may be involved with the preparation of employee disciplinary action, grievance responses, hiring information, and employee evaluations and have access to employees' personnel files that are kept at the department level.

a. Stephanie Stavrakis, administrative assistant to the vice-president of operations

Stephanie Stavrakis is Bankston's administrative assistant. Her duties include handling all of Bankston's telephone calls, her calendar, including scheduling meetings for her, and preparing any documents that Bankston may require. Because Bankston, as vice-president of operations, has significant interaction with the Human Resources Department concerning collective-bargaining agreement negotiations, Stavrakis may have access to documents containing information relating to collective-bargaining agreement proposals or to the Employer's classification on bargaining issues. The record discloses, however, that she generally does not prepare such documents because collective-bargaining agreement proposals and negotiating strategies are primarily formulated, developed and implemented by the Human Resources Department under the direction of Burns.

Stavrakis also has access to, and files, confidential information pertaining to employees throughout the hospital. This information may include proposals involving changes in pay rates or proposals that the Employer may make to change jobs. The administrative assistants to other vice-presidents or divisional directors function in a

similar manner as Stavrakis, but their direct superiors do not have the same potential labor relations nexus and involvement in formulating labor relations policy as does Bankston.

b. Administrative assistant for the radiology department

The most extensive record testimony for the employees in this classification pertains to the administrative assistant for the radiology department, whom Petitioners would exclude from the unit as a technical employee or business office clerical. The radiology administrative assistant is responsible for the mammography program both in scheduling of patients, the collection of patient information, and in billing patients after their examination. These duties are significantly different from the primary duties performed by the seven administrative assistants who report to individuals holding the title of divisional director or above.

The record discloses that the administrative assistant in radiology works out of the radiology department. There is no evidence that individual(s) holding this classification have any daily contact with the Employer's business office clericals. All the business office functions for the Employer, as well as all the hospitals in the Alliance, are conducted from the Alliance's corporate offices on Burnet Avenue in Cincinnati. Finally, there is no evidence that the duties of the administrative assistant in radiology are of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses.

2. Conclusions regarding the confidential status of administrative assistants

Initially, I note that the Petitioners, in their brief, appear to argue that they do not have the burden of proving that an individual is a confidential employee. However, it is well settled that the burden of proving an employee's confidential status rests on the party asserting such status. *Intermountain Rural Electric Association*, 277 NLRB 1 (1985). I find that the Petitioners have not, with the exception of Stavrakis, met their burden of establishing that the administrative assistants are confidential employees.

The Board has a long established test for determining whether an individual is a confidential employee. The Board examines whether that person, "assists and acts in a confidential capacity to persons who formulate, determine, and effect management policies in the field of labor relations." *S. S. Joachim & Anne Residence*, 314 NLRB 1191, 1195, 1196 (1994), citing *B. F. Goodrich Co.*, 115 NLRB 722 (1956); see also *Bakersfield Californian*, 316 NLRB 1211, 1212 (1995). This "labor nexus" test was approved by the Supreme Court in *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170 (1981).

Considering the above and the record as a whole, I conclude that the record fails to establish that any of the administrative assistants, except arguably Stavrakis, perform confidential duties. They do not assist individuals who formulate, determine, and effect management policies in the field of labor relations. In reaching this conclusion, I am mindful of the Board's well-established practice of applying a narrow definition to the term "confidential," since to do otherwise would "needlessly preclude employees from bargaining collectively together with other employees sharing common interests." *B. F. Goodrich*, supra. at 724. Moreover, I note that the Board has held that access to proposed grievance responses or disciplinary notices does not, without more, warrant a determination of confidential status. *Bakersfield Californian*, supra at 1212; *Associated Day Care Services*, 269 NLRB 178, 180, 181 (1984). Accordingly, except for Stavrakis, I find that the administrative assistants are not confidential employees.

Concerning Stavrakis, however, the record establishes that Bankston has, at least, some involvement in formulating, determining, and effecting management policies in the field of labor relations because of her classification as vice-president of operations. Thus, it appears that Stavrakis routinely has access to confidential labor relations material and could, on occasion, be involved in the preparation of such documents. However, I find the testimony on this point speculative and lacking in specific examples of Stavrakis functioning in a confidential capacity. Although a substantial issue has been raised regarding Stavrakis' status as a confidential employee, I find that the record evidence is not dispositive. Accordingly, I shall permit Stavrakis to cast a challenged ballot should she appear at the polls to vote.

3. Conclusions regarding the status of the administrative assistant for radiology:

a. Business office clerical status

The Petitioners assert that the individual holding the classification of administrative assistant for radiology should be excluded from the residual non-professional voting group as a business office clerical or as technical employee. The Board has defined business office clericals as "those clerical employees who, because they perform business office functions, have minimal contact with unit employees or patients, work in geographic areas of the hospital, or perform functions, separate and apart from service and maintenance employees, and thus do not share a community of interest with the service and maintenance employees." *St. Luke's Episcopal Hospital*, 222 NLRB 674, 676 (1976). See also, *Rhode Island Hospital*, 313 NLRB 343, 359 (1993). In contrast, the Board has considered other clerical positions, frequently called "hospital clericals," to be properly included in a service and maintenance or other non-professional unit. Hospital clericals perform duties closely related to patient care, have frequent contact with unit employees, are commonly supervised with them, and tend to be located throughout the hospital within the various departments where unit employees work. *St. Elizabeth Hospital of Boston*, 220 NLRB 325 (1975); *Baptist Memorial Hospital*, 225 NLRB 1165 (1976).

During rule making considerations involving the placement of business office clericals, the Board noted that “(B)usiness office clericals are primarily responsible for a hospital’s financial and billing practices and deal with Medicare, DRG’s varying price schedules, multiplicity of insurance types and new reimbursement systems. Increasing computerization of financial management has led to specialization of other hospital employees.” [References to the record omitted] The Board further stated that, “business office clericals do not engage in any form of patient care and are not responsible for a patient’s physical or environmental health.” ^{8/}

Based on the duties of this position as described earlier, and the record as a whole, I find that the administrative assistant in radiology is not a business office clerical employee. ^{9/}

b. Technical employee status of administrative assistant radiology

I now turn to the assertion that the administrative assistant for radiology is a technical employee. Technical employees comprise one of the eight units endorsed by the Board in the Rule as being appropriate for collective-bargaining purposes in an acute care hospital. The Board has long defined a technical employee as:

[T]hose [individuals] who do not meet the strict requirements of the term professional employee as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses.

Barnert Memorial Hospital Center, 217 NLRB 775 (1975). In discussing the appropriateness of a technical unit in the context of the Rule, the Board noted that technical employees are distinguished by the support role that they play in a hospital setting and by virtue of the patient care work that they perform. 284 NLRB at 1553. Moreover, in addition to significant additional training and/or education beyond high school, technical employees are certified, licensed, or registered with the appropriate state authority. *Id.* In a number of cases involving acute care institutions the Board has applied its long-standing criteria for determining which employees are technical employees as set forth in the Rule and case precedent. See, *Meriter Hospital*, 306 NLRB 598 (1992); *Faribault Clinic*, 308 NLRB 131 (1992).

^{8/} 53 Fed.Reg. 170, 33924, 284 NLRB at 1562.

^{9/} As the Employer points out in its brief, this conclusion is consistent with a prior decision involving this Employer in which I found that administrative assistants were not business office clericals and were most appropriately included within an overall unit of non-professional employees. *University Hospital, Inc.*, 9-RC-16831 (February 21, 1997).

In the instant case, there is no evidence that the duties of the administrative assistant are of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses. Finally, there is no evidence that the administrative assistant is required to be certified, licensed, or registered with the appropriate state authority. Based on the foregoing and the record as a whole, I find that the administrative assistant in radiology is not a technical employee. Rather, the evidence shows that she is a hospital clerical who works within the radiology department, performs duties closely associated with patient care, and has significant contact with patients and health care providers.

4. CONCLUSIONS

Based on the above and the record as a whole, I find that the administrative assistants, with the exception of Stavrakis, are not confidential employees, business clerical employees or technical employees. Accordingly, I will include them in the proposed voting group.

D. CODER/ABTRACTOR

1. An Overview

There are 11 coders. They are classified as a level I, II or III; there is a single Coder III. Petitioners assert that the coder/abstractors are technical employees and, as such, should be excluded from the residual non-professional voting group. The Employer, contrary to Petitioners, contends that the individuals working in these positions are non-professional employees who should be included in the voting group found appropriate.

The Coder is responsible for evaluating inpatient and outpatient records and assigning the appropriate grouping codes for each diagnosis. The Employer then uses the grouping codes for billing and research purposes.

There are three levels of coders. A level I Coder deals mostly with outpatient charts and generally with the less complex medical records. Level II and III coders deal with more complex inpatient coding. For example, a large trauma case requires a Coder with more experience and the ability to interpret the data from a complex chart, which may contain laboratory data with reports from many different kinds of testing procedures. A Coder III also performs quality audits to ensure that the other coders are using the correct codes. In performing their duties, the coders use a codebook, which indicates the codes that are to be assigned to various tests and procedures. The coders use some judgment in determining which code to assign to a particular activity. However, their judgment is carefully reviewed and controlled.

Coders interact with physicians and nurses. They prepare formal and informal educational materials for physicians. Additionally, they have been involved with providing informal education for registered nurses.

With one exception, the coders work in the medical records department and report directly to Supervisor Valetta Reese, who reports to Kathleen Beals, the director of medical records. A single Coder works in the dialysis unit and reports to Vicki Holmes, who is the clinical manager for that unit. The coders in the medical records department work alongside medical records specialists who are currently represented by the Petitioners.

Coders have varying levels of training, education and experience, depending on whether they are a level I, II, or III Coder. They are trained on the use of the ICD-9 codebook that is used to convert patient chart data into information utilized for billing and research purposes. They are also trained in medical technology and disease processes. Coder IIs must have completed advanced course work in the same areas and it is preferred that they have at least 1 year of experience and experience with automated Coder applications. Coder IIIs possess the additional educational requirement of a bachelor's or associate's degree, preferably in Health Information Management. Moreover, greater experience is also required to be a Coder III. Finally, Coder IIs and IIIs are required to possess at least one of three recognized licenses or certificates issued to individuals in the field. ^{10/}

2. Conclusions regarding the coders

A technical employee is one whose work is of a "technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses." The record reflects that all coders are required to use their own judgment in assessing what code to apply to the information that they review. The amount of independent judgment that a coder is required to use is primarily based on the type of record that they are assigned to review.

Based on the above and the record as a whole, I find that the coders I are not technical employees within the meaning of the Act and I will include them in the residual non-professional voting group. In reaching this conclusion, I note that the coders exercise limited judgment in determining which code to apply when analyzing the medical data. Moreover, whatever judgment they do use in performing their duties is

^{10/} The Employer asserts in its brief that "the classification of [an] employee as a level I, II or III is determined by the employee's skill and competency level." However, it is unclear from the record if an employee can become a level II or III coder without having the necessary education or license or certificate. Further, the record before me does not reflect whether the state issues the license or certificate, or the requirements to receive the license or certificate.

not based on knowledge obtained from specialized training or education. Finally, they are not required by the State to have any special license or certificate to perform their duties.

Regarding the coders II and III, the record evidence before me is insufficient for me to determine with any degree of accuracy whether they are technical employees within the meaning of the Act and properly excluded from the residual non-professional unit. In reaching this conclusion, I note that the coders II and III are required to have specialized education to hold their position and they must receive a certificate or license. However, it is unclear from the record whether the certificate or license is a requirement of the State. Accordingly, I direct my agent to challenge their ballot should they show up to the polls to vote in the election.

E. ADMINISTRATIVE COORDINATOR

Petitioners contend that three administrative coordinators should be excluded from the residual non-professional voting group because they are supervisors, business office clericals, or confidential employees. The Employer disagrees and would allow them to vote. Although Petitioners, in their brief, appear to argue only for the exclusion of the administrative coordinator employed in radiology, I will nevertheless examine whether any of the administrative coordinators are appropriately included in the non-professional residual voting group.

1. An Overview

One administrative coordinator is employed in each of the following departments: radiology, cardiology, and at the “med/peds” clinic. The record discloses that administrative coordinators perform complex secretarial duties, including dictation, transcription, correspondence, scheduling of meetings, travel arrangements, and representing administrators or managers in meetings. They may also be involved in coordinating the ordering and delivery of supplies to the areas in which they work.

The job description for the administrative coordinator in radiology states that the person in this classification, “Interview(s), trains and supervises clerical personnel.” However, the record evidence indicates that this particular administrative coordinator does not supervise anyone. Although the administrative coordinator in radiology may represent the director of that department in the director’s absence, the evidence indicates that this function is limited to taking phone calls, representing the director in meetings and seeking out the right manager or supervisor to deal with any situations that arise when the director is absent. There is no substantive evidence on this issue with respect to the other administrative coordinators.

Administrative Coordinators are not required to have any education beyond a high school diploma or GED, or any specialized training. Moreover, there is no licensing or certification requirement for employees in these positions.

2. Conclusions

Based on the foregoing and the record as a whole, I find, for the following reasons, that the administrative coordinators are not confidential employees, supervisors or technical employees. Accordingly, I will include them in the residual non-professional voting group.

a. Confidential status

Concerning the contention that administrative coordinators are confidential employees, there is no evidence that any of the administrators or managers that the administrative coordinators support have any type of a labor relations nexus. Although the record indicates that administrative coordinators are responsible for maintaining confidential fiscal and personnel records, the Board has long held that mere access to such information does not confer confidential status on an employee. See *Rhode Island Hospital*, 313 NLRB 343 (1993). Based on the record, I find that the administrative coordinators are not confidential employees.

b. Supervisory status

Regarding the Petitioners' assertion that the administrative coordinators should be excluded from the residual non-professional voting group because they are statutory supervisors, it is well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491 (1993); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). Based on the above and the record as a whole, I conclude that the Petitioners have failed to sustain their burden establishing that the administrative coordinators are supervisors within the meaning of Section 2(11) of the Act.

c. Technical status

Finally, the Petitioners' contention that the administrative coordinators are technical employees is not supported by the record. There simply is no evidence that the work of an administrative coordinator is of a "technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses."

F. OFFICE COORDINATOR

The record discloses that one employee holds the classification of office coordinator in the heart failure/transplant clinic; however, the record does not give the name of the person who holds this classification. Petitioners contend that the office coordinator should be excluded from the residual non-professional unit as a business office clerical employee or as a supervisor or managerial employee. The Employer would include the office coordinator in the residual non-professional voting group.

1. An Overview

The only witness who testified about the office coordinator classification indicated that she was not familiar with that job. Thus, the only substantive evidence on this classification is the job description that was submitted by the Employer. This job description indicates, in part, that the individual in this classification directly supervises four employees. The nature and extent of such supervision, or even if it exists, is not reflected in the record.

2. Conclusion

I find that there is insufficient evidence to reach a conclusion on the supervisory status of the office coordinator. Although I recognize that Petitioners bear the burden of proof on this issue, I conclude that the job description alone raises significant questions regarding the appropriateness of placing the office coordinator in the residual non-professional voting group. Thus, if the individual possessing the title of office coordinator appears at the polls to cast a ballot, I instruct my agent to challenge that vote.

G. SENIOR STAFFING COORDINATOR

Petitioners contend that the senior staffing coordinator should be excluded from the residual non-professional voting group as a business office clerical or managerial employee. The Employer would include the classification in the residual non-professional voting group.

1. An Overview

Gina Moore is employed on the first floor of the Employer's main building as the senior staffing coordinator and has responsibilities related to long term scheduling. She works in the staffing office alongside the staffing coordinators who, as stipulated to by the parties, are part of the residual non-professional voting group.

Moore concentrates on long range staffing issues by assisting managers with the scheduling of the nursing department staff on a month-to-month basis. She also approves, rejects, and adjusts invoices submitted by temporary agencies based on records she reviews reflecting the hours that temporary employees have worked. If she has any questions regarding an invoice, she may contact the appropriate agency for clarification. Nancy Hanley, the manager for clinical support services, reviews all of Moore's decisions regarding invoices. Moore inputs data into the Employer's scheduling database and she may assist with daily scheduling, as needed, by providing daily assignments to float pool personnel.

Moore does not have any role in hospital billing. She is required to have an associate's degree or an equivalent combination of education and experience. The classification does not require any license or certification. The type of duties performed

by Moore and the staffing coordinators, such as the scheduling of staff in particular, are closely associated with patient care. Moreover, Moore works in the same area and with the staffing coordinators, whom the Petitioners have stipulated to be part of the residual non-professional unit.

2. Conclusions

Based on the foregoing and the record as a whole, I conclude that Moore is not a business office clerical as claimed by the Petitioners. Finally, I note that there is no evidence that Moore is a “managerial” employee as asserted by the Petitioners. Accordingly, I will include her in the residual non-professional group as an eligible voter.

H. VOLUNTEER SERVICES COORDINATOR

One individual is employed in this classification. Petitioners did not take a position regarding whether this classification is appropriately included in the residual non-professional voting group.^{11/} The Employer contends that the classification is part of the residual non-professional group. There is no other evidence in the record about this position.

Conclusion

The record before me does not provide any basis for resolving the unit placement issue of this position. I will, therefore, allow the volunteer services coordinator to vote subject to challenge and I hereby instruct my agent conducting the election to challenge her ballot if she appears at the polls to vote.

I. O.R. REQUISITIONER

In their brief, the Petitioners maintain that the O.R. Requisitioner should be clarified into the existing unit. They did not express an opinion, either in their brief or at the hearing, regarding whether this classification should be allowed to vote in the event a self-determination election was directed. The Employer contends that the employees should be allowed to vote in any self-determination election.

1. An Overview

The primary job function of the O.R. Requisitioner is to purchase, locate, and resolve backlog problems with inventory and maintain certain types of repair records. The job was created in about November 2000 because of a requirement by the Alliance

^{11/} The Petitioners, however, do contend in their brief that no classification for which job descriptions or testimony were not presented or agreed to should be included in the voting group. It would appear, therefore, that Petitioners would exclude this classification from the voting group.

that the Employer perform electronic data entry and electronic requisitions. Before that time orders were handwritten and faxed to an individual at the Alliance who was an expeditor. The O.R. Requisitioner keys some purchases directly into the Employer's "Lawson" purchasing system. The O. R. Requisitioner also assists clinical personnel in locating requested supplies and in resolving any backorder issues. He also assists in maintaining the Employer's computerized repair log.

The O.R. Requisitioner works in conjunction with about five inventory control clerks or specialists, who supply him with handwritten data or data from handheld units. The O.R. Requisitioner inputs that data into the Employer's purchasing and inventory control system. The Petitioners currently represent the inventory control specialists.

2. Conclusions

Based on the above and the record as a whole, I find that the O. R. Requisitioner is a non-professional employee and I will include the employee in that classification in the residual non-professional group. In reaching this conclusion, I note that the evidence reflects that the O.R. Requisitioner shares a strong community of interest with other non-professional employees that warrant his inclusion in the residual non-professional unit. Moreover, I note that the parties appear to tacitly agree that the O.R. Requisitioner should be part of the residual non-professional group and there is no evidence that the O. R. Requisitioner falls within the definition of any of the other units set forth in the Rule.

J. TRAUMA AND TUMOR REGISTRARS

The Petitioners contend that the trauma and tumor registrars, comprising two employees in each classification, should be excluded from the residual non-professional voting group because they are technical employees. The Employer contends that the employees in both classifications are properly included in the residual non-professional voting group.

1. An Overview

a. Trauma registrars

The trauma registrars are located in a separate office area in a building adjacent to the Employer's campus owned by the University of Cincinnati. They are responsible for maintaining an ongoing data registry of trauma patients in the hospital. This data is used for quality control and research purposes. The classification does not require any license or certification and only an associate's degree in a health-related discipline or an equivalent combination of education and experience. Trauma registrars earn between \$10.95 and \$16.10 an hour, a pay range the same as 3 other classifications and lower than at least 14 positions asserted by the Employer to be non-professional.

b. Tumor registrar

The tumor registrar is a classification similar to that of the trauma registrar. The tumor registrars work in an office on the first floor of the Barret Center, one of the buildings on the Employer's campus, and are responsible for establishing and maintaining an ongoing registry of cancer patients. This data is used for quality control and research purposes. This classification does not require any license or certification. It does require completion of a correspondence course in Medical Record Terminology or an equivalent combination of education and experience. Tumor registrars earn between \$12.07 and \$17.76 an hour, a pay range the same as three other classifications and lower than at least five other positions asserted by the Employer to be non-professional.

2. Conclusions

In some instances, registrars, similar in nature to the trauma and tumor registrars, have been included in technical units. *Meriter Hospital*, supra. In other instances, they have been included in non-professional units. *Rhode Island Hospital*, supra. Accordingly, unit placement of these registrars, particularly the slightly more complex classification of tumor registrar, poses a close question. I find, however, based on the record evidence, that the trauma and tumor registrars employed by the Employer are not technical employees. In reaching this conclusion, I have relied on their moderate rates of pay in comparison to other members of the residual non-professional voting group and the modest training and education requirements for these positions beyond the high school level. I will, therefore, include the trauma and tumor registrars in the residual non-professional unit.

K. ADMINISTRATIVE SECRETARY

The Petitioners take the position that the administrative secretaries should be excluded from the non-professional residual voting group on the basis that they are either business office clericals, technical employees, managerial employees, or for other reasons that are not clearly stated.^{12/} The Employer contends that they are appropriately included in the residual non-professional voting group.

^{12/} Although Petitioners did not make this argument in their briefs, it appears from the record that Petitioners also contend that at least some of the administrative secretaries should be excluded from the residual non-professional unit as confidential employees. In any event, I find that the administrative secretaries are not confidential employees as they do not assist and act "in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." S.S. *Joachim & Anne Residence*, supra at 1196 (citation omitted).

1. An Overview

The record discloses that there are 21 administrative secretaries in 7 different subclassifications; however, the record does not disclose how many administrative secretaries work in each subclassification. They perform all the complex secretarial duties for the individual or individuals who are managing the particular department or departments in which they are employed. They also assist in program development up to, and including, coordination of some of those activities in the individual departments.

Administrative secretaries in four of the seven subclassifications are required to have an associates degree or, in most instances, an equivalent combination of education and experience. Administrative secretaries in the three remaining classifications are only required to have a high school diploma or GED. There is no license or certification requirement for these positions, with the exception that the administrative secretary for the social work department must be a notary.

The record indicates that all administrative secretaries work within the various departments to which they are assigned. The departments are Patient Care Services, Heart Failure/Transplant Clinic, Echo Vascular Lab, Social Work, and Respiratory Care Services. Finally, it appears from the record that the rate of pay for the administrative secretaries is commensurate with the wage rate for other members of the non-professional voting group. Thus, the administrative secretaries earn between \$10.42 and \$15.33 an hour.

2. Conclusions

Based on the above and the record as a whole, I find that the administrative secretaries are appropriately included in the residual non-professional voting group. In this regard, unlike business office clericals, administrative secretaries work in their respective departments, do not perform business office functions, and share a community of interest with other nonprofessional employees. Additionally, unlike technical employees, their positions do not require significant additional training and/or education beyond high school and there is no requirement that they be licensed or certified. Moreover, there is no evidence that the type of work that they perform requires the exercise of independent judgment. Finally, there is no evidence to support the contention that any administrative secretary is a “managerial” employee. Accordingly, I find that the administrative secretaries are properly included in the residual non-professional voting group.

L. ADMINISTRATIVE SECRETARY II

1. An Overview

The record discloses only that this classification exists. The Employer takes the position that the six employees in this classification should be included in the residual

non-professional voting group. The Petitioners have not taken any position with respect to this classification.

2. Conclusion

In the absence of any evidence as to the duties of the administrative secretaries II or whether they share a community of interest with the existing bargaining unit, I am unable to determine with any degree of certainty whether they should be included in the voting group that I have found to be appropriate. Accordingly, I direct my agent conducting the election to challenge their ballot should they appear at the polls to vote.

M. MEDICAL SECRETARY

There are six employees in this classification. Petitioners contend that employees in this classification should be excluded from the residual non-professional unit because they are employed in a “business office type administrative support job,” or, because they are “administrative, managerial, confidential, technical and supervisory.” The Employer contends that employees in this classification perform primarily clerical functions and that they are appropriately included in the residual non-professional unit.

1. An Overview

The record reflects that medical secretaries perform typical clerical duties. For instance, they type reports, letters, and other documents from dictation or from notes; coordinate meetings, interact with patients and physicians depending on which department they're working in; and perform general secretarial duties such as filing, organizing, paperwork, answering telephone calls, and screening calls for their respective supervisors.

The job descriptions submitted for medical secretary indicate that at least three employees in this classification who are employed in radiology directly supervise one or two employees. However, there is no record testimony that they engage in the actual exercise of any supervisory authority over these employees.

The educational requirements for the medical secretaries appear to be minimal. They are only required to have a high school degree. They are not required to have any specialized training, licenses or certifications for the classification.

Their wages are commensurate with other non-professional residual employees. They earn between \$10.42 and \$15.33 an hour, which is a wage range shared by the administrative secretaries and eight other employee groups in issue.

2. Conclusions

Based on the above and the record as a whole, I find that the medical secretaries are appropriately included in the residual non-professional unit. In this regard, I note again that there is no probative evidence to support Petitioners' contention that they should be excluded from the residual non-professional voting group. Thus, there is no evidence that the employees employed in this classification are business office clericals, managerial employees, confidential employees, technical employees or supervisors within the meaning of Section 2(11) of the Act. Accordingly, I find that the medical secretaries are properly included in the residual non-professional voting group.

N. EEG/EMU ¹³/ CERTIFIED SPECIALIST

The record discloses that there is one individual employed in this classification. The Petitioners contend in their brief that this classification should not be placed in the residual non-professional voting group because the "job is more difficult than the PCA duties which the Employer contends is a technical classification." ¹⁴/ The Employer contends that this classification is primarily a secretarial classification and that the individual employed in the classification is appropriately included with the residual non-professional unit.

1. An Overview

The individual in this classification is in charge of much of the EMU paperwork, including billing, ordering supplies, and transcription. Additionally, she has been trained to recognize a seizure and, therefore, is able to provide brief coverage of video monitors as necessary to relieve other employees. The employee in this classification is paid near the high end of the wage range for those employees sought by the Employer to be included in the residual non-professional voting group. The position's wage range is from \$13.31 to \$19.58 an hour. The record does not disclose whether any license or certification is required for this classification.

2. Conclusions

Based on the above and the record as a whole, I will include the EEG/EMU certified specialist in the residual non-professional voting group. In this regard, I note that the evidence establishes that the employee in this classification primarily performs clerical duties within the EEG/EMU department, which is located in the midst of an inpatient unit on the 4th floor of the Employer's main hospital building. Although this

¹³/ Electroencephalography/epilepsy monitoring unit.

¹⁴/ I have already found that the PCAs are not technical employees and are appropriately included in the residual non-professional unit. Thus, this argument against the inclusion of the EEG/EMU certified specialist is not persuasive.

position is paid on a higher wage scale than many of the employees sought to be placed in the non-professional voting group and has some training in recognizing seizures, there is no evidence that the position requires the type of substantial advanced education and training that characterizes technical employees. Accordingly, and in the absence of any compelling evidence to the contrary, I find that the EEG/EMU certified specialist is properly included in the residual non-professional voting group.

O. ADMINISTRATIVE DIETETIC TECHNICIAN

The parties did not offer any testimonial evidence about this classification. The Petitioners contend that this classification should be excluded from the residual non-professional group “based on its title.” The Employer seeks to include this classification in the residual non-professional voting group because the Board has held that “technicians belong in the [non-professional] group.”

1. An Overview

The record reveals little about this classification. Thus, all that is known from the record is that the Employer employs one employee in this classification and that the classification is paid between \$12.68 and \$18.65 an hour, a scale above that of most of the employees and classifications in issue.

2. Conclusions

I am unable on such scant record testimony regarding this job to make a determination regarding the placement of the classification vis-à-vis the residual non-professional unit. Accordingly, based on the foregoing and the record as a whole, I will instruct my agent conducting the election to challenge the ballot of the administrative dietetic technician should he or she appear at the polls to cast a ballot.

P. EEG/EMU TECHNICIAN

The record reflects that there are six employees employed in this classification. The Petitioners contend that because this classification is technical in nature it should be excluded from the residual non-professional unit. The Employer maintains that this classification is appropriately included in the residual non-professional unit, in part because the classification requires only a high school education or GED and because there are no licensing or certification requirements.

1. An Overview

The record discloses that the duties of the EEG/EMU technicians are related to patient care and treatment. Their main job is to perform EEG procedures and to monitor the patient while they are in the EMU unit.

There are no educational, licensure or certification requirements for the employees currently holding these positions. However, the record and the job description for this classification indicates that those entering the field after 2005 will be required to have a 2-year science oriented college degree.

The wage rates for the EEG/EMU technicians appear to be commensurate with other non-professional residual employees. Thus, the technicians are paid an hourly wage from \$9.34 to \$13.24 an hour, which places them below the mid-range wage rate of other members of the residual non-professional group.

2. Conclusions

Based on the above and the record as a whole, I find that the EEG/EMU technicians are nonprofessional employees who are appropriately included in the residual non-professional voting group. In reaching this conclusion, I note that there is currently no requirement that an employee in this classification have more than a high school level education and that the potential future requirement for an additional education background does not convert the employees currently holding this classification into technical employees. Accordingly, I will include the EEG/EMU technicians in the residual non-professional group.

Q. MEDICAL RECORDS TECHNICIAN

There are two employees employed in this capacity. The Petitioners contend that at least one of the employees in this classification is employed by the Alliance and, as such, is jointly employed by the Employer and other Alliance hospitals. The Petitioners assert this employee's joint employer status precludes the employee's placement in the residual non-professional voting group. The Employer contends that the employees in this classification are appropriately included in the residual non-professional voting group.

1. An Overview

The medical records technicians are employed in the medical records and tumor registry departments. These departments are located in different buildings on the Employer's campus.

The responsibilities of the technicians vary based on their assigned department. The technician in the medical records department is responsible for maintaining statistical data regarding births and deaths and handles all aspects of completing paperwork for births. This work requires patient and physician interaction and interaction with staff outside the medical records department. The medical records technician in the tumor registry follows up on diagnosed cancer patients and inputs the follow up data into a statistical database.

The wage rates for the technicians are similar to those of other residual non-professional employees. They earn between \$9.81 and \$13.91 an hour.

There is no requirement of an advance degree for the classification. Technicians are required to have only a high school education and two courses dealing with record management and business communications or a total of 4 months' experience. No license or certification is required, although there is a preference that the medical records employee be an accredited medical record technician.

Finally, the Petitioners contend that the job description for this classification shows that the employees work for other employer members of the Alliance. However, there is no other evidence in the record before me of a joint employer relationship with respect to any of the employees in issue. Thus, there is no basis for me to find that a joint employer relationship exists.

2. Conclusions

Based on the above and the record as a whole, I conclude that the medical records technicians are appropriately included in the residual non-professional voting group. In this regard, I note that there is no evidentiary basis to sustain Petitioners' assertion that the Alliance, rather than the Employer, employs the technician in the medical records department. The mere fact that the job description for that classification references the Alliance and other member hospitals reflects, at most, only that the classification is standardized across the Alliance, and does not indicate that the Alliance is the employer of any employees in this classification.^{15/} Accordingly, I find that the medical records technicians are properly included in the residual non-professional voting group.

R. REGISTERED EEG TECHNOLOGIST

There are two employees employed in this capacity. The Petitioners assert that this classification must be excluded from the residual non-professional group because it is a supervisory and a technical position. The Employer contends that, as technicians, Board precedent favors placing employees in such classifications within a non-professional unit.

1. An Overview

The registered EEG technologists greet patients, measure their heads and perform lead placement of surface electrodes to evaluate the patient's electrical brain waves. In addition, they monitor patients in the EMU, which is a unit that is designed to monitor patients 24 hours a day with video and EEG for seizures or epilepsy. They also

^{15/} The Petitioners apparently make the same argument about the medical records technician in the tumor registry, but do not specifically reference that employee.

perform intra-operative electrocardiography, which essentially involves measuring electrical brain waves during surgery. They decide whether changes in electrical patterns are significant enough to warrant contacting a physician during overnight hours. The physician then decides whether the situation requires that he/she visit the patient in person. If the physician directs that a prescription be given, the technologist will involve a registered nurse on the unit.

Employees in this classification are not licensed, but they are required to be certified by their professional organization and they are required to successfully complete an approved education program in the field or to have an equivalent combination of education and experience. It takes approximately 6 months to 2 years of on-the-job training for a technician to become registered. A 2-year degree in science or computer technology is preferred.

Registered EEG technologists earn from \$13.31 to \$19.58 an hour, which places them near the high end of the wage scale for classifications in issue. The job description indicates that employees in this classification indirectly supervise between six and nine employees. However, the record does not disclose the nature of this supervision, or even whether it actually exists.

2. Conclusions

a. Supervisory status

Based on the foregoing and the record as a whole, I conclude that the employees in this classification are not supervisors within the meaning of the Act. In this connection, I note that there is no evidence in the record that these employees possess or exercise any of the indicia of supervisory status as defined by Section 2(11) of the Act.

b. Technical employee status

Based on the above and the record as a whole, I conclude that the employees in this classification share the characteristics of technical employees, including substantial post-high school training, experience, and certification. Additionally, their duties require them to exercise at least some independent judgment in evaluating electrical patterns that indicate the brain wave functioning of patients under their care. Accordingly, I find that the registered EEG technologists are technical employees who are not appropriately included in the residual non-professional voting group. Accordingly, I will exclude them from the voting group found appropriate. Because I have found that the EEG technologists are technical employees, the Employer's reliance in its brief on Board precedent favoring the inclusion of "technicians" in a residual non-professional voting group, is inapposite.

S. EEG/EPT TECHNOLOGIST

There is one individual employed in this classification. The Petitioners again contend that this classification is both supervisory and technical in nature, requiring that it be excluded from the residual non-professional group. The Employer argues that Board precedent favors placing such technicians in such classifications within a non-professional group.

1. An Overview

The employee in this classification performs the same type of duties as are performed by the registered EEG technologist and performs an additional neuro-diagnostic test called evoked/potentials. This test is primarily performed during the course of an operation.

This position is the highest paid of all of the employees in issue, with a pay rate from \$14.88 to \$22.65 an hour. The employee in this classification is required to possess the same training and certification as the registered EEG technologist and must additionally be certified by the same professional body to perform the evoked/potentials testing. Again, a 2-year degree in science or computer technology is preferred and 2 to 3 years of directly related experience is required for employees in this classification.

2. Conclusions

My finding concerning this classification logically follows from the conclusion set forth immediately above with respect to the registered EEG technologists. The EEG/EPT technologist classification requires an even greater degree of experience and training and the additional knowledge to perform a complex intra-operational test that the registered EEG technologists cannot perform. Although I find that the EEG/EPT technologist is not a supervisor, I conclude the classification is a technical position which is appropriately excluded from the residual non-professional voting group. Accordingly, I will exclude this classification from the voting group found appropriate.

T. OPHTHALMIC ASSISTANT

There is one individual employed in this classification. The Employer contends that this classification is appropriately included in the residual non-professional voting group. Although the Petitioners stipulated to its inclusion on the record, the record contains a typographical error on this point. In their brief, the Petitioners assert that this classification is technical in nature and that it should be excluded from the residual non-professional voting group on that basis.

1. An Overview

There is little record evidence regarding this classification. The record does disclose, however, that the employee in this classification is paid on a scale that ranges from \$9.34 to \$13.24 an hour. Additionally, the job description for this classification reflects that the employee in this job is responsible for performing ophthalmologic testing under the supervision of a physician. This classification requires a high school diploma and one year experience as an ophthalmology assistant or equivalent experience. The classification also requires certification in the field or, again, 1-year experience as an ophthalmology assistant.

2. Conclusions

Based on the above and the record as a whole, I find that the ophthalmic assistant is appropriately included in the residual non-professional group. In this regard, I note that there is no evidence that the work of the ophthalmic assistant requires the use of independent judgment. Moreover, the classification does not require specialized additional training and/or education beyond high school and is paid on the same wage scale as the medical assistants and commensurately with other classifications in the residual non-professional voting group. Thus, I conclude that the ophthalmic assistant is not a technical employee and I will include the employee in this classification in the residual non-professional voting group.

IV. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section (2), (6) and (7) of the Act.
5. The petition filed in Case 9-UC-473 is hereby dismissed.
6. In accord with the foregoing findings, I will direct an election be held among the employees in the following voting group:

Rad Clinical Care Associate, Clerical Assistant, Clinical Assistant, Medical Assistants, Transplant Assistant, Visitor Services Associate, File Clerk, Central Dispatch Coordinator, Clinical Services Coordinator, Staffing Coordinator, Patient Monitor, Communication Specialist, Emergency Transport Communication Specialist, Cardiac Technician, Dialysis Technician, Orthopedic Technician, Medical Transcriptionist, Intake Worker, Patient Care Assistants, Client Service Attendant, Senior CSA, Pharmacy Technician I, Pharmacy Technician II, Pharmacy Technician III, Staff Assistant, Student Nurse, Equipment Operator, Medical Data Entry Operator, Scheduler (Preoperative and Diagnostic Services), Medical Records Specialist II, Patient Relations Specialist, Administrative Assistants, Coder/Abstractor, Administrative Coordinator, Office Coordinator, Senior Staffing Coordinator, O.R. Requisitioner, Trauma and Tumor Registrars, Administrative Secretary, Administrative Secretary II, Medical Secretary, Administrative Dietetic Technician, EEG/EMU Technician, and Ophthalmic Assistant employed by the Employer at its Cincinnati, Ohio medical complex, but excluding all other employees, and all professional employees, technical employees, confidential employees, guards and supervisors as defined in the Act.

If a majority of the employees in this voting group vote for the Petitioners, they will be taken to have indicated their desire to be included in the unit currently represented by Petitioners. If a majority of them vote against the Petitioners, they will be taken to have indicated their desire to remain unrepresented. In either event, the undersigned will issue a certification of results of election with respect thereto.

V. DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations.

A. Voting Eligibility

Eligible to vote in the election are those in the voting group who were employed during the payroll period ending immediately before the date of the Decision including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period and the replacements of those economic strikers. Those employees in the military services of the United States may vote if they appear in person at the polls. Those eligible shall vote whether they desire to be represented for collective-bargaining purposes by the Ohio Council 8, American Federation of State,

County and Municipal Employees, AFL-CIO and Local 217, American Federation of State, County and Municipal Employees, AFL-CIO.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote all parties to the election should have access to a list of voters and their addressees which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I will, in turn, make the list available to all parties to the election, only after I have determined that an adequate showing of interest among the employees in the voting group found appropriate has been established.^{16/} To speed both preliminary checking and the voting processes, the names on the list should be alphabetized (overall or by department, etc.).

To be timely filed the list must be received in the Regional Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202, on or before **April 14, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirements to file this list. Failure to comply

^{16/} Because of my findings enlarging the residual voting group of non-professionals, further processing of the petition is contingent upon Petitioners having an adequate showing of interest among the employees in the enlarged voting group. Accordingly, it is hereby directed that a sufficient showing of interest must be submitted by the Petitioners with the Regional Director for Region 9 within 7 days of the date of this Decision. The additional evidence of interest submitted by the Petitioners may post date this Decision. In the event a request for review is filed with respect to this Decision, the requirement to submit an additional showing of interest will be suspended until the Board rules upon the request for review. As with all submissions of interest, the additional showing of interest may not be submitted by facsimile transmission. Sec. 102.114, of the Board's Rules and Regulations.

with the requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election please furnish two copies unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in an area conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1985). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by 5 p.m. (EDST) **April 21, 2003**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 7th day of April 2003.

/s/ Richard L. Ahearn, Regional Director

Richard L. Ahearn, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Classification Index

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470-8800
470-8840-3000
470-9000
470-9025-6700